RECENT CASES.

CONTRACTS.

Release of Surety on Supersedeas Bonds—Agreement for Settlement.—Jacksonville, M. & P. Ry. & Nav. Co. v. *Hooper*, 85 Fed. Rep. 620.—A judgment was recovered against a railroad company, and pending proceedings to review the company paid to the plaintiff a sum in cash, and delivered certain bonds in escrow, on an agreement that, if the bonds should advance in market value to par within a year, they should be accepted by the plaintiff in full satisfaction of the judgment. They failed to reach the stipulated value and were tendered back. The proceedings in error were not dismissed, but resulted, after the expiration of the year, in an affirmance. *Held*, that such transaction did not discharge the sureties over defendant's supersedeas bond. Pardee, Circuit Judge, *dissented*, on the ground that the argument for delay between the principals released the sureties, unless it was done with their consent.

Street Railroads—Transfers—Rights of Passengers.—Jenkins v. *Brooklyn Heights R. Co.*, 51 N. Y. Supp. 216. A New York law compels certain companies to give transfers to their passengers for one continuous trip without extra charge. Under this law it is not a reasonable regulation for the company to adopt an arbitrary time limit within which such a transfer must be used and a person holding such a transfer is justified in waiting until a car comes along in which he can secure a seat.

Injunction—Building Restrictions.—Alvord v. *Fletcher*, 51 N. Y. Supp. 117. Two parcels of land were subject to the same covenant, which restricted the class of buildings to be erected thereon and their distance from the street. The fact that the owner of one of them is maintaining thereon a building which violates the covenant justifies the court in refusing him a preliminary injunction restraining the owner of the other parcel from committing a similar breach.

Maritime Liens—Priority—Supplies.—The John G. Stevens, 18 Sup. Ct. Rep. 544. A lien for damages on a tug for negligently allowing the tow to come into collision with another vessel will be given priority over a lien on the tug for supplies previously furnished. All interests existing at the time of the collision in the offending vessel—whether by way of part ownership, of mortgage, of bottomry bond, or of other maritime lien for repairs or supplies—arising out of contract with the owner of the vessel, are parts of the vessel herself, and as such are bound by and responsible for her wrongful acts. A suit by the owner of a tow against her tug for an injury to the tow by negligence on the part of the tug is a suit *ex delicto* and not *ex contractu*.

Carriers of Goods—Freight.—Moran Bros. Co. v. *No. Pac. R. R. Co.*, 53 Pac. Rep. (Wash.) 49. When a carrier demands a sum in excess of the sum due for freight charges, the consignee need not tender any sum before bringing suit (*Adams* v. *Clark*, 9 Cush. 215); also, if the carrier has negligently

delayed delivery of goods, or otherwise subjected itself to liability for damages in respect to the property carried, equal to or greater than the amount of the freight, the consignee may obtain replevin without a tender; and the claim for damages may be adjudicated in the replevin suit.

Carriers—Passengers — Extraordinary Care. — Southern Ry. Co. v. *Smith*, 86 Fed. 292. *Held*, that where one who has a passenger ticket in his pocket, but has not been to the depot, nor in any way notified the officers or agents of the company that he intends to take passage, crosses the tracks to board an outgoing train, he is not a person to whom the company owes a duty of extraordinary care and diligence as a passenger. McCormick, J., dissented.

Executory Contract—Repudiation by one Party—Resulting Right of Action.—Marks v. *VanEeghen et al.*, 85 Fed. 853. Where one party to an executory contract renounces it, without cause, before the time for performing it has arrived, he authorizes the other party to treat it as terminated, without prejudice to a right of action for damages, and if the latter elects to treat the contract as terminated, his right of action accrues at once. But the evidence of the intention to repudiate the contract must be unequivocal. This decision is contrary to that of *Daniels* v. *Newton*, 114 Mass. 530, approved in the recent case of *Clark* v. *Casualty Co.*, 67 Fed. 222. Also, the court considers as *dicta* the observations to the same effect in *Smoot's Case*, 5 Wall. 36, and *Dingley* v. *Oler*, 117 U. S. 490; and that the Supreme Court of the United States has never passed upon the question directly. The present conclusion is considered by the court to be in line with the preponderance of adjudication, beginning with the leading English case of *Hochster* v. *DeLa Tom*, 2 El. and Bl. 678.

Contract to make Will—Specific Performance.—Edson v. *Parsons et al.*, 50 N. E. Rep. (N. Y.) 265. Two sisters, closely united by affection, and in habits, associations and ideas, and who were also very much attached to a brother, made their wills at the same time and under the supervision of, and after consultation with, their counsel. The wills were alike, each sister giving to the other three-fourths of her residuary estate, and the remainder of the other fourth, after certain legacies were paid. It was further provided that if the testatrix should survive her sister, or if her sister, surviving her, should die before her will was proved, all the residue of her estate should go to her brother. Upon the death of one of the sisters, the other made a different will, and upon her death the brother sought to establish the provision of the first will as a contract between the sisters to give their property ultimately to him. *Held*, that the making of the wills and the attendant circumstances, were not sufficient, as a matter of law, to establish a contract such that a court of equity would interfere to prevent the surviving testatrix from altering by making a subsequent will. To invoke such an interference there must be a clear and definite contract, arising from an express agreement or from unequivocal facts.

INSURANCE.

Insurance—Accident Policy—Injuries in a Passenger Conveyance.—Ætna Life Ins. Co. v. *Vandecar*, 86 Fed. 282. An accident policy of insurance provided that "if such injuries are sustained while riding as a passenger